

## **REMARKS/DISCUSSION:**

This Response A is being filed within two months after the shortened statutory period for response that ended on February 24, 2009. Accordingly, a Petition for a Two-Month Extension of Time is attached hereto.

By this Response A, claims 1-14 and 16-20 are pending in this application. Claim 15 has been canceled. Claims 1, 4, 6, 9, 16, and 19 have been amended. Support for the amendments to claims 1 and 16 can be found at Figs. 5-8.

Amendment and/or cancellation of claims is not to be construed as a dedication to the public of any of the subject matter of the claims previously presented. Further, any amendments or arguments are made without conceding the correctness of any of the rejections of the pending Office Action, and Applicant(s) reserves the right to prosecute the subject matter of such claims in continuation and/or divisional applications.

Applicant has carefully studied the outstanding Office Action. This Amendment is intended to be fully responsive to all points of rejection raised by the Examiner and is believed to place the application in condition for allowance. Favorable reconsideration and allowance of the application are respectfully requested.

### Claim Objections

Claim 6 stands rejected because of a typographical error. Claims 6 and 7 have been amended to correct improper dependencies for both claims.

### Rejection under 35 U.S.C. § 102(b)

Claims 1-11 and 16-20 stand rejected as being anticipated by U.S. Patent No. 5,275,607 to Lo as noted in the office action.

Under MPEP 2131, a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a

single prior art reference. The identical invention must be shown in as complete detail as is contained in the claim. In addition, the elements in the prior art reference must be arranged as required by the claim.

Independent claims 1 and 16 have been amended to recite:

a housing;

an outer tube having a proximal end joined to the housing, and a distal end;

a waveguide positioned within the outer tube, . . . ; and

at least one lumen positioned in within the outer tube and in an overlapping relationship with the blade.

Lo neither discloses nor suggests a waveguide positioned within an outer tube and a lumen positioned with the outer tube.

Reconsideration is requested.

Claims 2-11 all depend from claim 1 and claims 17-20 depend from claim 16. Without acquiescing in any way to arguments presented by the Examiner as to these claims, Applicant(s) submits that these claims are likewise patentable over Lo for at least the same reasons as discussed above with respect to claim 1 and 16, respectively, by virtue of their dependency from claims 1 and 16. Withdrawal of the rejections as to these claims is likewise requested.

#### Rejection under 35 U.S.C. § 103

Claims 12-15 stand rejected as being unpatentable over Lo as noted in the office action. Claims 12-15 depend from claim 1, and based upon the previous discussions, Lo, disclose or suggest the claimed invention. Reconsideration is requested.

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### **Conclusion**

Applicant submits that in view of the discussion, the rejections under 35 U.S.C. §§ 102(b) and 103 have been overcome and that the invention is now patentable over the cited prior. The Examiner is respectfully requested to reconsider all rejections and pass this case to issue.

Should any minor points remain prior to issuance of a Notice of Allowance, the Examiner is requested to telephone the undersigned at the below-listed telephone number.

The Commissioner is hereby authorized to charge any additional fees, which may be required to Account No. 10-0750/END0797USNP/VEK.

Respectfully submitted,

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